

(2024) 03 J&K CK 0022

In the Jammu And Kashmir High Court

Case No : Writ Petition (Criminal) No. 479 Of 2022

Sageer Ahmad

APPELLANT

Vs

Ut Of J&K & Another

RESPONDENT

Date of Decision : 19-03-2024

Acts Referred:

Constitution Of India, 1950 — Article 22(5), 22(6)
Prevention Of Illicit Traffic In Narcotic Drugs And Psychotropic Substance Act, 1988 —
Section 3
Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 8, 20

Citation : (2024) 03 J&K CK 0022

Hon'ble Judges : Rajnesh Oswal, J

Bench : Single Bench

Advocate : Hussain Rashid, Sajad Ashraf

Final Decision : Dismissed

Judgement

Rajnesh Oswal, J

1. Aggrieved of the order of detention bearing No.DIVCOM- "K"/25/2023 dated 29.03.2023 whereby the petitioner has been detained under Section (3) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substance Act, 1988, the petitioner has impugned the order of detention on the ground that the detaining authority i.e. the respondent No. 2 has not shown his awareness in respect of grant of bail to the petitioner by the court of learned Principal Sessions Judge, Baramulla. Further no compelling reasons have been assigned by the respondent No. 2 while issuing the order of detention. It is further urged that the material relied upon by the respondent No. 2 has not been provided to the petitioner.

2. Counter affidavit has been filed by the respondents wherein it is stated that the petitioner was apprehended in FIR No. 07/2023 under Section 8/20 of NDPS Act of Police Station Kreeri on 08.02.2023 by the Police post Wagoora at Wazir Crossing, where naka was laid. 65 grams of charas was allegedly recovered from

the petitioner and as per the FSL report, the contraband turned out to be 'Ganja'. As the activities of the petitioner were posing serious threat to the health and welfare of the area, the petitioner was ordered to be detained under the Act (supra). It is further stated that all the statutory requirements and constitutional guarantees have been fulfilled by the detaining authority by taking into consideration the object of preventive detention. The detention warrant was executed and the petitioner was handed over to the Superintendent, Central Jail Kotbalwal Jammu for lodgment. The contents of the grounds of detention were read over and explained to the detainee in the language which he understands fully. The detainee was also informed that he has a right to make a representation to the government against the detention order. The petitioner was also furnished with copies of the order of detention and the grounds of detention.

3. Learned counsel for the petitioner has submitted that the detaining authority has passed the order without demonstrating its awareness with regard to the grant of bail in FIR No. 07/2023. He has further submitted that the material relied upon by the detaining authority was not provided to the petitioner which disabled him to make an effective representation before the respondent No. 2 and also to the Government.

4. Per contra, learned counsel for the respondents has vehemently argued that the activities of the petitioner were found to be prejudicial to the health and welfare of the residents of the area and it is because of this reason, he was ordered to be detained by the respondent No. 2. He laid much stress that all the constitutional as well as procedural safeguards have been meticulously followed while issuing and executing the order of detention.

5. Perusal of the record reveals that sponsoring agency i.e, Senior Superintendent of Police Baramulla submitted a dossier and other connected documents before the respondent No. 2 and after perusing the same and taking note of the involvement of the petitioner in FIR No. 07/2023 under Section 8/20 NDPS Act of Police Station Kreeri, the petitioner was ordered to be detained under the Act (supra). The record submitted by the respondents reveals that the detention order, notice of detention, grounds of detention, copies of FIR , statement of witnesses and other related documents were provided to the petitioner whereas dossier of detention has not been provided to the petitioner. In fact, in the execution report, while referring to the number of leaves against "dossier of detention", the expression "Nil" has been used.

6. It is a settled law that all the documents relied upon by the Detaining Authority while issuing the order of detention are required to be supplied to the detainee so as to enable him to make an effective representation against his detention. Failure on the part of the respondent No.2 to supply whole of the material relied upon by him to the petitioner while issuing the impugned order of detention, renders the impugned order of detention illegal. In this regard, reliance is placed upon the decision of the Supreme Court of India in *Thahira Haris v. Government of Karnataka*, (2009) 11 SCC 438, the relevant para

whereof is reproduced as under:

"30. Our Constitution provides adequate safeguards under clauses (5) and (6) of Article 22 to the detainee who has been detained in pursuance of the order made under any law providing for preventive detention. He has the right to be supplied with copies of all documents, statements and other materials relied upon in the grounds of detention without any delay. The predominant object of communicating the grounds of detention is to enable the detainee at the earliest opportunity to make effective and meaningful representation against his detention."

7. Further this Court finds that neither in the grounds of detention prepared by the respondent No.2 nor in the dossier submitted by the Sponsoring Agency to the respondent No. 2 there is any whisper that after the petitioner was detained in FIR No. 07/2023 under Section 8/20 of NDPS Act of Police Station Kreeri on 08.02.2023, he was released on bail by the court of learned Principal Sessions Judge, Baramulla on 02.03.2023. The order impugned has been passed oblivious to the fact that the petitioner was enlarged on bail. The sponsoring agency was under obligation to have brought the complete facts to the notice of the detaining authority so as enable the detaining authority to derive its subjective satisfaction that despite grant of bail, the detention of the petitioner is necessary. On this ground also, the order of detention is not sustainable in the eyes of law.

8. In view of the above, this Court is of the considered view that the order of detention bearing No.DIVCOM-"K"/25/2023 dated 29.03.2023 is not sustainable in the eyes of law. Accordingly the same is quashed. The petitioner is directed to be released from the custody provided he is not involved in any other case.

9. The detention record be returned to learned counsel for the respondents.